

REMARKS

This paper responds to the Final Office Action (*Office Action*) and the *Advisory Action*, having electronic notification dates of June 24, 2009 and September 18, 2009, respectively. Although Applicants believe the pending claims define over the cited art, Applicants have nonetheless amended claims 1, 2, 6, 7, 16, 17, 19-38, 43, 46, and 52-72 merely in order to advance prosecution. Support for the amendments may be found in Applicants' Published Patent Application No. 2004/0213272 at, for example, paragraph [0021] and [0022]. No claims have been added. Claims 73-112 were previously canceled and no claims are presently canceled. Therefore, claims 1-72 remain pending in this application.

Rejection of the Claims under 35 U.S.C. § 103(a)

On page 3 of the *Advisory Action*, the Examiner withdrew the rejection of claims 1-3, 19-21, 37-39, and 55-57 under 35 U.S.C. § 103(a) as being obvious over U.S. Published Patent Application No. 2003/0046437 to Eytchison et al. (*Eytchison*) in view of U.S. Patent No. 6,112,246 to Horbal et al. (*Horbal*). Applicants thank the Examiner for withdrawing the rejection.

On page 4, paragraph 8 of the *Office Action*, the Examiner rejected claims 1-5, 8, 17-18, 19-23, 26, 35-36, 37-41, 44, 53-54, 55-59, 62, and 71-72 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,853,637 to Norrell et al. (*Norrell*), in view of *Eytchison* and *Horbal*. On page 3 of the *Advisory Action*, the Examiner maintained the rejection of these claims. In response, Applicant have amended each of the independent claims, namely claims 1, 19, 37, and 55.

The recent U.S. Supreme Court decision of *KSR v. Teleflex* provides a tripartite test to evaluate obviousness.

The rationale to support a conclusion that a claim would have been obvious is that all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective

functions, and the combination would have yielded nothing more than predictable results to one of ordinary skill in the art.¹

Applicants will show that the cited references, either singly or in combination, neither teach nor suggest all limitations of Applicants' claimed elements, with no change in the respective functions of the cited references, nor is there any substantiating evidence that the combination of the references would have yielded nothing more than predictable results. "If ***any of these [three] findings*** cannot be made, then this rationale [of combining prior art elements according to known methods to yield predictable results] cannot be used to support a conclusion that the claim would have been obvious."²

In particular, Applicants' amended independent claim 1 recites, *inter alia*,

[I]nitiating a discovery request from a communication device over a network;

receiving a response from the discovery request from dissimilar communication devices on the network to at least partially determine a network topography; and

transmitting data between the communication device and the dissimilar communication devices without requiring a proxy device to enable communications, the communication device and the dissimilar communication devices communicating through a common interface that operates in accordance with aspects of the communication device and the dissimilar communication devices that have been abstracted.³

Consequently, Applicants have specifically disclaimed using a proxy device to enable communications. Further, Applicants have added additional limitations neither taught nor suggested by the cited art. Applicants' other independent claims, namely claims 19, 37, and 55, each share similar limitations with claim 1.

In contrast to Applicants' claims, the Examiner stated that the cited art requires a proxy.

¹ See *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 82 U.S.P.Q.2d 1385 (2007); see also MPEP § 2143, emphasis added.

² MPEP § 2143, emphasis added.

³ Emphasis added.

Eytchison does change the network architecture by introducing a proxy as a common interface. Therefore, *the combination of Norrell and Eytchison disclose an architecture where a proxy is used as a common interface to allow the different devices to communicate.*⁴

Since Applicants have shown that not all the claimed elements were known as required by KSR, either by *Norrell* singly or in any combination with either *Eytchison* or *Horbal*, and that the cited art would require a significant change in their respective functions, Applicants respectfully request the Examiner to reconsider and withdraw the rejection under 35 U.S.C. § 103 with regard to independent claims 1, 19, 37, and 55.

Moreover, claims 2-5, 8, 17, 18, 20-23, 26, 35, 36, 38-41, 44, 53, 54, 56-59, 62, 71, and 72 all depend directly or indirectly from one of the independent claims that Applicants have shown to be allowable. Thus, each of these dependent claims is allowable for at least the same reasons as given above with regard to the independent claims from which they depend. Further, each of these dependent claims may be allowable for its own limitations.

On page 7, paragraph 19 of the *Office Action* and as maintained on page 3 of the *Advisory Action*, the Examiner rejected claims 6-7, 24-25, 42-43, and 60-61 under 35 U.S.C. § 103(a) as being obvious over *Norrell* in view of *Eytchison* and *Horbal*, as applied to claims 5, 23, 41, and 59 above, and further in view of U.S. Patent No. 7,191,236 to Simpson-Young et al. (*Simpson-Young*). On page 8, paragraph 23, the Examiner rejected claims 9-10, 27-28, 45-46, and 63-64 under 35 U.S.C. § 103(a) as being obvious over *Norrell* in view of *Eytchison* and *Horbal* et al., as applied to claims 4, 22, 40, and 58 respectively above, and further in view of U.S. Published Patent Application No. 2002/0099867 to Wilkinson et al. (*Wilkinson*). On page 9, paragraph 26 the Examiner rejected claims 11-13, 29-31, 47-49, and 65-67 under 35 U.S.C. § 103(a) as being obvious over *Norrell* in view of *Eytchison* and *Horbal*, as applied to claims 1, 19, 37, and 55 above, and further in view of U.S. Patent No. 6,789,123 to Li et al. (*Li*). On page 10, paragraph 29 of the *Office Action*, the Examiner rejected claims 14, 32, 50, and 68 under 35 U.S.C. § 103(a) as being obvious over *Norrell* in view of *Eytchison* and *Horbal*, as applied to claims 1, 19, 37, and 55 above, and further in view of U.S. Published Patent Application No.

⁴ *Advisory Action* at 3, emphasis added.

2001/0030950 to Chen et al. (*Chen*). On page 10, paragraph 31, the Examiner rejected claims 15, 33, 51, and 69 under 35 U.S.C. § 103(a) as being obvious over *Norrell* in view of *Eytchison*, *Horbal*, and *Chen*, as applied to claims 14, 32, 50, and 68 above, and further in view of U.S. Patent No. 6,298,069 to Prabhu et al. (*Prabhu*) and U.S. Patent No. 6,233,611 to Ludtke et al. (*Ludtke*). Finally, on page 11, paragraph 33 of the *Office Action*, the Examiner rejected claims 16, 34, 52, and 70 under 35 U.S.C. § 103(a) as being obvious over *Norrell* in view of *Eytchison* and *Horbal*, as applied to claims 1, 19, 37, and 55 respectively above, and further in view of *Ludtke*.

However, each of these claims depend either directly or indirectly from one of the independent claims, 1, 19, 37, or 55, that Applicants have shown to be allowable. Neither *Simpson-Young*, *Wilkinson*, *Li*, *Chen*, *Prabhu*, nor *Ludtke* do anything to cure the deficiencies of *Norrel*, *Eytchison*, or *Horbal*, above. Thus, each of these dependent claims is allowable for at least the same reasons as given above with regard to the independent claims 1, 19, 37, and 55 from which they depend. Further, each of these dependent claims may be allowable for its own limitations.

CONCLUSION


Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone the undersigned attorney at (408) 660-2015 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

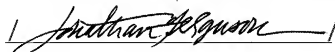
Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(408) 660-2015

Date October 20, 2009

By 
Bradley W. Scheer
Reg. No. 47,059

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on October 20, 2009.



Jonathan Ferguson